

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALFONSO VASQUEZ-AYALA,

Petitioner(s),

v.

UNITED STATES OF AMERICA,

Respondent(s).

NO. C05-209P

ORDER ADOPTING REPORT AND
RECOMMENDATION

The above-entitled Court, having received and reviewed:

1. Report and Recommendation
2. Petitioner's Objections to Magistrate's Report and Recommendation

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS HEREBY ORDERED that the Report and Recommendation is ADOPTED and
Petitioner's § 2255 motion is hereby DISMISSED.

Discussion

Petitioner was a member of a drug debt collection ring and plead guilty in October 2003 to one count of kidnapping and one count of hostage-taking. He was sentenced to 78 months imprisonment (with three years of supervised release) in January 2004. He did not file a direct appeal of his sentence.

Petitioner has filed a § 2255 motion, arguing that the court, in sentencing him, used factors which had neither been found by a jury nor admitted by him, in violation of his Sixth Amendment rights. It is his sole claim, and he makes it in reliance on United States v. Booker, 125 S.Ct. 738 (2005).

1 Petitioner does not contest the government's position that the Ninth Circuit has ruled that
2 Booker is not retroactive. United States v. Cruz, 423 F.3d 1119 (9th Cir. 2005). What he argues
3 instead is that, because there is a case which has been granted certiorari by the U.S. Supreme Court
4 (State of WA v. Recuenco, No. 05-83) which is "strikingly similar" to Booker, this Court should delay
5 its ruling until the Supreme Court issues its decision in that case. Petitioner claims, with no citation to
6 authority or other corroboration, that the question of Booker's retroactivity will "undoubtedly be
7 answered" when the Recuenco opinion issues. Objections at p.2.

8 Even passing over the issue of whether it is proper to ignore binding Ninth Circuit precedent to
9 wait for a Supreme Court ruling at an unspecified date, Petitioner's argument is unavailing. A review
10 of Recuenco reveals that it is neither based on Booker, nor does it concern issues of retroactivity. A
11 ruling one way or another in Recuenco will have no effect on Booker nor upon this case. Petitioner
12 may not rely upon Booker here, and his § 2255 petition must be dismissed.

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14 The clerk is directed to provide copies of this order to Petitioner and all counsel of record.

15 Dated: March __14__, 2006

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18 Marsha J. Pechman
19 U.S. District Judge
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